

**TOWN OF FREMONT
INTRODUCTORY LOCAL LAW
NO. 1 of 2021
MORATORIUM ON INSTALLATION OF COMMERCIAL WIRELESS
TELECOMMUNICATION FACILITIES**

A local law imposing a 1 year moratorium on the filing, acceptance or approvals for installation of any commercial wireless telecommunications facilities (“Wireless Facilities”) or building permits for Wireless Facilities located within the Town of Fremont (Town”) pursuant to New York State Constitution Article IX, Municipal Home Rule Law §§ 10, 20 and 22 as well as Town Law §§ 264 and 265.

BE IT ENACTED by the Town Board of the Town of Fremont, Steuben County, New York, as follows:

Section 1. Legislative Purpose.

The purpose of this local law is to temporarily suspend requirements to approve installation of Wireless Facilities while the Town considers changes to its comprehensive plan and considers and adopts changes to its land use regulations. This local law is intended to allow the Town to review and potentially amend the comprehensive plan and land use regulations to provide for controlled growth that will not unduly impact the public welfare, community services, schools and infrastructure, to preserve open space, and to plan for a proper mix of residential and commercial development. This stop gap or interim measure is intended to preserve the status quo pending the adoption of an amended comprehensive plan and amended planning and land use regulations in accordance with the newly revised comprehensive plan. The overall purpose of this local law is to promote community planning values by regulating land development based on a carefully considered plan. This local law prevents a “race of diligence” by those seeking to obtain approvals before the new comprehensive plan and regulations are in place. This local law will protect the public interest and welfare until an amended comprehensive plan and land use law are adopted. This local law will assist the Town in maintaining its historic character, provide for enhanced liveability and support a vibrant economic and neighborhood environment.

The Town Board finds and determine that several planning issues affecting the Town’s growth should be addressed by possibly amending the comprehensive plan, implementing elements of the comprehensive plan not previously implemented to address, among other planning issues, aesthetic and density concerns, environmental protection overlay districts, historic district regulations and architectural review regulations.

Section 2. Moratorium Imposed.

A. For a period of twelve months (12) months following the date of adoption of this local law, no approval of site plans, building permits or other approvals for Wireless Facilities shall be granted in the Town of Fremont unless expressly exempted from this moratorium pursuant to Section 3 below.

proposing “Approval” shall mean any permit pertaining to a Wireless Facility where such permit is not part of an approved subdivision, special permit or site plan that has completed SEQR and has applied for and received a permit pursuant to said approval. In addition, no new applications for any Wireless Facilities shall be accepted and/or processed by any of the Town’s boards, unless expressly exempted from this moratorium pursuant to Section 3 below. This local law is binding on all Town boards, officers and employees and on all persons and property intending to erect a Wireless Facility within the Town.

B. This moratorium may be extended by two (2) additional period of up to three (3) months each by resolution of the Town Board upon a finding of need for such extension.

C. During the period of the moratorium, the Town shall endeavor to adopt an amended comprehensive plan or implement elements of the existing comprehensive plan not yet implemented, including establishing a planning board, adopting a site plan review law, or consider adopting a modified form-based code together with design standards to preserve the livable community nature and existing architecture of the Town.

Section 3. Exceptions to Moratorium.

A. The following types of approvals or building permits may be granted or conditionally granted during the moratorium:

1. Approval of an addition, alteration or reconstruction of an existing Wireless Facility which results in no material change in such structure and which is not intended or designed to accommodate any new or different use of such structure.

2. Nothing contained in this section shall be deemed to prevent the reconstruction of a building, structure or premises used as a dwelling in the event of casualty or act of God, provided that, prior to the Town Board approving this introductory local law, such building, structure or premises had been legally used for a multiple dwelling, and further provided that any reconstruction shall be substantially similar in physical dimension, area coverage and location to the building, structure or premises which existed prior to said reconstruction.

B. No Wireless Facility application shall be accepted for review by any of the Town’s boards, officers or employees on or after the date of adoption of this local law, except for an application seeking a development approval described in subsections A.

C. This moratorium shall not prohibit the denial of an application as provided above.

Section 4. Administrative Relief from Moratorium.

A. In order to prevent an unlawful taking of property and to prevent irreparable harm, the Town Board is authorized to grant limited relief from this moratorium pursuant to the standards and requirements herein. An applicant seeking such relief shall be required to show by clear and convincing evidence, including credible dollars and cents proof, that the applicant cannot make any reasonable use of its property with any of the uses permitted in the relevant district; that the

moratorium causes irreparable injury to the applicant; and that it would be unreasonable and unjust not to grant relief from the moratorium. Any relief granted by the Town Board shall be the minimum necessary and the Town Board may impose conditions on any relief granted.

B. All such applications shall be actions subject to SEQRA. The Town Board may designate the Planning Board or itself, as the case may be, as lead agency for such applications if the Town Board deems it advisable. In the event relief from the moratorium is granted by the Town Board, the applicant shall proceed to other Town board(s) or officials to apply for required approval(s). Notwithstanding any relief granted pursuant to this section, an approval shall not be granted unless the approved application complies with all land use regulations and all other requirements in effect on the date of approval.

C. The applicant or any other person aggrieved by a decision of the Town Board hereunder may apply to the state supreme court pursuant to article seventy-eight of the civil practice laws and rules.

Section 5. Default Approvals Abolished.

Notwithstanding any law, rule, or regulation to the contrary, no Wireless Facility approval shall be granted, deemed granted or dispensed with as a result of the passage of time. Any and all approvals granted during the period of the moratorium shall require the affirmative vote of the reviewing board(s) with jurisdiction and endorsement of the plat or plan as otherwise required by law.

Section 6. Supersession of Inconsistent Laws, if any.

The Town Board hereby declares its legislative intent to supersede any provision of any local law, rule, or regulation and any provision of the state Town Law or other special law that may be declared inconsistent or in conflict with this local law. The state law provisions that shall be, and hereby are, superseded include, but are not limited to, all of Article 2 of the Town Law and any other provision of law that the Town may supersede pursuant to the state Municipal Home Rule Law and the Constitution of the State of New York. The courts are specifically requested to take notice of this legislative intent and apply such intent in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this local law and superseded such provision had it been apparent.

Section 7. Severability.

If any section, part or provision of this local law or the application thereof to any person, property or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, provision or application directly and expressly adjudged invalid and shall not affect or impair the validity of the remainder of this local law or the application thereof.

Section 8. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.